

DSS:HLJ

IN THE UNITED STATES DISTRICT COURT
FOR EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE SEARCH OF
INFORMATION ASSOCIATED WITH

FACEBOOK GROUP ID NUMBER
308837767803, FACEBOOK USERNAME:
www.facebook.com/arihalberstam

THAT IS STORED AT PREMISES
CONTROLLED BY FACEBOOK

12 M 1003

Case No. _____

**AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR A SEARCH WARRANT**

I, Nicholas S. Hanak, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application for a search warrant for information associated with a certain Facebook group ID number 308837767803, FACEBOOK USERNAME: www.facebook.com/arihalberstam, also known as the Ari Halberstam Memorial Group page, that is stored at premises owned, maintained, controlled, or operated by Facebook, a social networking company headquartered in Menlo Park, California. The information to be searched is described in the following paragraphs and in Attachment A. This affidavit is made in support of an application for a search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A) to require Facebook to disclose to the government records and other information in its possession, pertaining to posts made on the Ari Halberstam Memorial Group page between July 7 and 14, 2012.

2. I am a Special Agent with the Federal Bureau of Investigation ("FBI"), and have been since 2009. I have been assigned to work on Counterterrorism investigations since

February 2011. I have participated in numerous investigations of on-line terrorist recruiters, financiers and facilitators operating within New York City and Western Europe. I have personally participated in the investigation discussed below. I am familiar with the facts and circumstances of this investigation from: (a) my personal participation in the investigation, (b) reports made to me by other law enforcement authorities, and (c) records obtained pursuant to subpoenas. On the basis of this familiarity, and on the basis of other information that I have reviewed and determined to be reliable, I submit the following information.

3. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that violations of Title 18, United States Code, Section 875(c), have been committed by Rashid Baz or unknown persons utilizing his likeness on Facebook. There is also probable cause to search the information described in Attachment A for evidence of these crimes, as described in Attachment B.

BACKGROUND ON FACEBOOK

4. Facebook owns and operates a free-access social networking website of the same name that can be accessed at <http://www.facebook.com>. Facebook allows its users to establish accounts with Facebook, and users can then use their accounts to share written news, photographs, videos, and other information with other Facebook users, and sometimes with the general public.

5. Facebook asks users to provide basic contact and personal identifying information to Facebook, either during the registration process or thereafter. This information may include the user's full name, birth date, gender, contact e-mail addresses, Facebook passwords, Facebook security questions and answers (for password retrieval), physical address (including city, state,

and zip code), telephone numbers, screen names, websites, and other personal identifiers.

Facebook also assigns a user identification number to each account.

6. Facebook users may join one or more groups or networks to connect and interact with other users who are members of the same group or network. Facebook assigns a group identification number to each group. A Facebook user can also connect directly with individual Facebook users by sending each user a “Friend Request.” If the recipient of a “Friend Request” accepts the request, then the two users will become “Friends” for purposes of Facebook and can exchange communications or view information about each other. Each Facebook user’s account includes a list of that user’s “Friends” and a “News Feed,” which highlights information about the user’s “Friends,” such as profile changes, upcoming events, and birthdays.

7. Facebook users can select different levels of privacy for the communications and information associated with their Facebook accounts. By adjusting these privacy settings, a Facebook user can make information available only to himself or herself, to particular Facebook users, or to anyone with access to the Internet, including people who are not Facebook users. A Facebook user can also create “lists” of Facebook friends to facilitate the application of these privacy settings. Facebook accounts also include other account settings that users can adjust to control, for example, the types of notifications they receive from Facebook.

8. Facebook users can create profiles that include photographs, lists of personal interests, and other information. Facebook users can also post “status” updates about their whereabouts and actions, as well as links to videos, photographs, articles, and other items available elsewhere on the Internet. Facebook users can also post information about upcoming “events,” such as social occasions, by listing the event’s time, location, host, and guest list. In addition, Facebook users can “check in” to particular locations or add their geographic locations

to their Facebook posts, thereby revealing their geographic locations at particular dates and times. A particular user's profile page also includes a "Wall," which is a space where the user and his or her "Friends" can post messages, attachments, and links that will typically be visible to anyone who can view the user's profile.

9. Facebook has a Photos application, where users can upload an unlimited number of albums and photos. Another feature of the Photos application is the ability to "tag" (i.e., label) other Facebook users in a photo or video. When a user is tagged in a photo or video, he or she receives a notification of the tag and a link to see the photo or video. For Facebook's purposes, the photos associated with a user's account will include all photos uploaded by that user that have not been deleted, as well as all photos uploaded by any user that have that user tagged in them.

10. Facebook users can exchange private messages on Facebook with other users. These messages, which are similar to e-mail messages, are sent to the recipient's "Inbox" on Facebook, which also stores copies of messages sent by the recipient, as well as other information. Facebook users can also post comments on the Facebook profiles of other users or on their own profiles; such comments are typically associated with a specific posting or item on the profile. In addition, Facebook has a Chat feature that allows users to send and receive instant messages through Facebook. These chat communications are stored in the chat history for the account. Facebook also has a Video Calling feature, and although Facebook does not record the calls themselves, it does keep records of the date of each call.

11. If a Facebook user does not want to interact with another user on Facebook, the first user can "block" the second user from seeing his or her account.

12. Facebook has a “like” feature that allows users to give positive feedback or connect to particular pages. Facebook users can “like” Facebook posts or updates, as well as webpages or content on third-party (*i.e.*, non-Facebook) websites. Facebook users can also become “fans” of particular Facebook pages.

13. Facebook has a search function that enables its users to search Facebook for keywords, usernames, or pages, among other things.

14. Each Facebook account has an activity log, which is a list of the user’s posts and other Facebook activities from the inception of the account to the present. The activity log includes stories and photos that the user has been tagged in, as well as connections made through the account, such as “liking” a Facebook page or adding someone as a friend. The activity log is visible to the user but cannot be viewed by people who visit the user’s Facebook page.

15. Facebook Notes is a blogging feature available to Facebook users, and it enables users to write and post notes or personal web logs (“blogs”), or to import their blogs from other services, such as Xanga, LiveJournal, and Blogger.

16. The Facebook Gifts feature allows users to send virtual “gifts” to their friends that appear as icons on the recipient’s profile page. Gifts cost money to purchase, and a personalized message can be attached to each gift. Facebook users can also send each other “pokes,” which are free and simply result in a notification to the recipient that he or she has been “poked” by the sender.

17. Facebook also has a Marketplace feature, which allows users to post free classified ads. Users can post items for sale, housing, jobs, and other items on the Marketplace.

18. In addition to the applications described above, Facebook also provides its users with access to thousands of other applications on the Facebook platform. When a Facebook user

accesses or uses one of these applications, an update about that the user's access or use of that application may appear on the user's profile page.

19. Some Facebook pages are affiliated with groups of users, rather than one individual user. Membership in the group is monitored and regulated by the administrator or head of the group, who can invite new members and reject or accept requests by users to enter. Facebook can identify all users who are currently registered to a particular group and can identify the administrator and/or creator of the group. Facebook uses the term "Group Contact Info" to describe the contact information for the group's creator and/or administrator, as well as a PDF of the current status of the group profile page.

20. Facebook uses the term "Neoprint" to describe an expanded view of a given user profile. The "Neoprint" for a given user can include the following information from the user's profile: profile contact information; News Feed information; status updates; links to videos, photographs, articles, and other items; Notes; Wall postings; friend lists, including the friends' Facebook user identification numbers; groups and networks of which the user is a member, including the groups' Facebook group identification numbers; future and past event postings; rejected "Friend" requests; comments; gifts; pokes; tags; and information about the user's access and use of Facebook applications.

21. Facebook also retains Internet Protocol ("IP") logs for a given user ID or IP address. These logs may contain information about the actions taken by the user ID or IP address on Facebook, including information about the type of action, the date and time of the action, and the user ID and IP address associated with the action. For example, if a user views a Facebook profile, that user's IP log would reflect the fact that the user viewed the profile, and would show when and from what IP address the user did so.

22. Social networking providers like Facebook typically retain additional information about their users' accounts, such as information about the length of service (including start date), the types of service utilized, and the means and source of any payments associated with the service (including any credit card or bank account number). In some cases, Facebook users may communicate directly with Facebook about issues relating to their accounts, such as technical problems, billing inquiries, or complaints from other users. Social networking providers like Facebook typically retain records about such communications, including records of contacts between the user and the provider's support services, as well as records of any actions taken by the provider or user as a result of the communications.

23. Therefore, the computers of Facebook are likely to contain all the material described below, including stored electronic communications and information concerning subscribers and their use of Facebook, such as account access information, transaction information, and other account information.

PROBABLE CAUSE

24. On March 1, 1994, sixteen-year old Ari Halberstam was murdered by Rashid Baz ("Baz"), a gunman who opened fire on a van carrying more than a dozen Hasidic students as it began to cross the Brooklyn Bridge from Manhattan into Brooklyn, New York. On December 1, 1994, Baz was convicted of one count of second-degree murder and 14 counts of attempted murder in New York State Court. On January 18, 1995, Baz was sentenced to 141 years in prison.

25. Following her brother's death, Chana Apfelbaum ("Apfelbaum") and her husband set up a Facebook memorial group page in honor of her brother, called the Ari Halberstam Memorial ("AHM") group page. The Facebook username for the page is:

www.facebook.com/arihhalberstam and the Facebook Group ID number for the page is 308837767803. Apfelbaum is an administrator of the AHM group page, as such she posts information about her brother and his death and monitors posts left by others on the page.

26. On July 14, 2012, Apfelbaum noticed a threatening post on the wall of the AHM group page. The post read: "i will return for your mother, jew of shit." Apfelbaum recalled the post having an associated post-date of approximately July 13 or 14, 2012, though she could not be certain. Though Apfelbaum could not remember the name associated with the post, she immediately recognized the photograph associated with the post's author to be that of her brother's murderer, Baz. When Apfelbaum saw the threat and the photograph, she became so upset that she immediately deleted it from the AHM group page.¹

27. Subsequently, Apfelbaum contacted Facebook regarding the threatening post. Facebook requested that Apfelbaum identify the post on the AHM group page and forward it to them. However, she was unable to do so because she had already deleted it.

28. Law enforcement contacted Facebook about recovering the threatening post and its author's user information. Facebook advised investigators to preserve the account and though Apfelbaum gave her consent to have the account searched and reviewed, Facebook indicated that a search warrant is required to search for deleted posts. The account was preserved on October 22, 2012. This search warrant seeks any and all evidence retained by Facebook pertaining to the deleted post and/or its author.

¹ Apfelbaum provided FBI agents with consent to search her computer for any information regarding this post to the AHM page. A search of her computer did not reveal any information that could assist in identifying the author of the post. The only data stored in the cache of the computer was captured subsequent to July 15, 2012, when Apfelbaum deleted her cache because she was having difficulty uploading a picture to her personal blog.

INFORMATION TO BE SEARCHED AND THINGS TO BE SEIZED

29. I anticipate executing this warrant under the Electronic Communications Privacy Act, in particular 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A), by using the warrant to require Facebook to disclose to the government copies of the records and other information (including the content of communications) particularly described in Section I of Attachment B. Upon receipt of the information described in Section I of Attachment B, government-authorized persons will review that information to locate the items described in Section II of Attachment B.

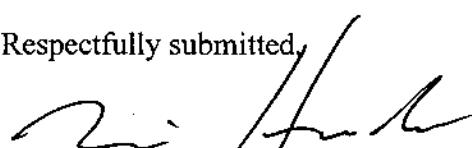
CONCLUSION

30. Based on the forgoing, I request that the Court issue the proposed search warrant.

31. This Court has jurisdiction to issue the requested warrant because it is "a court of competent jurisdiction" as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A) & (c)(1)(A). Specifically, the Court is "a district court of the United States . . . that – has jurisdiction over the offense being investigated." 18 U.S.C. § 2711(3)(A)(i).

32. Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this warrant.

Respectfully submitted,


Nicholas S. Hanak
Special Agent
FBI

Subscribed and sworn to before me
on October 25, 2012


THE HONORABLE
UNITED STATES
EASTERN DISTRICT OF NEW YORK
S. Levy